Chicago & Northeast Illinois District Council of Carpenters and Carpenters Union Local 558 (Joyce Brothers Storage & Van Company) *and* Ira Gleason. Case 13–CD–549

August 14, 2000

DECISION AND ORDER QUASHING NOTICE OF HEARING

BY MEMBERS LIEBMAN, HURTGEN, AND BRAME

The charge in this Section 10(k) proceeding was filed February 11, 1998, by Charging Party Ira Gleason, an employee of the Employer Joyce Brothers Storage & Van Company (Joyce Brothers), alleging that the Respondent, Chicago & Northeast Illinois District Council of Carpenters and Carpenters Union Local 558 (Carpenters Local 558), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing Joyce Brothers to assign certain work to employees that it represents rather than to employees represented by Teamsters Local Union 705, affiliated with the International Brotherhood of Teamsters, AFL–CIO (Teamsters Local 705). The hearing was held on March 11, 1998, before Hearing Officer Alan A. Satyr.

On July 28, 1999, the National Labor Relations Board granted Joyce Brothers' request for special permission to appeal the hearing officer's ruling quashing the notice of hearing, and remanded the case for further appropriate action. Following a notice of hearing dated August 11, 1998, which was amended on August 19, 1998, a full hearing was held on September 8, 1998, before Hearing Officer Vivian Perez. Thereafter, Joyce Brothers and Carpenters Local 558 filed briefs.

The National Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

Joyce Brothers, an Illinois corporation, with offices located in Melrose Park, Illinois, is engaged in the business of commercial and residential moving and storage. During the 12 months preceding the hearing, Joyce Brothers performed services valued in excess of $50,000 for companies directly engaged in interstate commerce. The parties stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that Carpenters Local 558 and Teamsters Local 705 are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of Dispute

The Employer is a moving company which does both residential and commercial moving. It has a collective-bargaining agreement with Teamsters Local 705, which represents a bargaining unit of tractor-trailer drivers, truckdrivers, helpers, and warehousemen. One of Joyce Brothers' longstanding customers is a company known as Midcon Corporation, which has a facility in Lombard, Illinois.

For at least 10 years, employees of Joyce Brothers represented by Teamsters Local 705 have periodically disassembled, relocated, and reassembled cubicles for Midcon. The cubicles consist of movable partitions ranging from 30 to 60 inches in height, which are connected by using bracket-like clips. In addition, there is a separate desk surface connected to the cubicle walls by a clip. The assembled cubicles are the workspace for Midcon office employees.

On January 14, 1998, Stanley Macenas and Douglas Bannister, business manager and business representative, respectively, of Carpenters Local 558, visited the Midcon jobsite, where they observed four men installing cubicles. Macenas and Bannister asked for the men's union cards. Two of the men did not have union cards and were not at the time members of any union. The other two, one of whom was Ira Gleason, the Charging Party, were members of Teamsters Local 705.

Macenas and Bannister then went to see Carol Doerr, the facility manager for Midcon. According to Doerr, the men told her that she needed to "stop having the cubicle furniture put together by Joyce Brothers," as she was "taking food out of their children's mouths. And that they would picket." She responded by asking what she needed to do to avoid a work stoppage.

As a result of the meeting with Macenas and Bannister, Doerr stopped construction at Midcon and contacted Joyce Brothers to determine whether Joyce could provide union carpenters, i.e., employees represented by Carpenters Local 558. Thereafter, Joyce Brothers subcontracted with Chicago Installation Company, which provided union carpenters. No further disassembly or assembly of cubicles was done by any member of Teamsters Local 705 after January 14, 1998.

Ira Gleason, then the union steward for Teamsters Local 705, who was present at the meeting between Doerr and the representatives of the Carpenters, telephoned Local 705 Business Agent Richard de Vries to advise de Vries that Carpenters Local 558 was claiming the cubicle work. De Vries initially opined to Gleason that it sounded as though Carpenters Local 558 was taking Teamsters' work, and de Vries promised Gleason to look into it. Although de Vries and Gleason spoke after that date, de Vries did not inform Gleason of the results of his investigation, nor did de Vries ever affirmatively advise Gleason that the cubicle work belonged to employees represented by the Teamsters.

On February 11, 1998, Gleason filed a charge alleging that Carpenters Local 558 violated Section 8(b)(4)(D) of the Act. Thereafter, on March 2, 1998, Thomas R. Car-

penter, legal counsel for Teamsters Local 705, wrote to Terrence McGann, legal counsel for Carpenters Local 558, disclaiming the "assembly and disassembly work related to the installation and erection project at Midcon." On March 9, 1998, Carpenters Local 558 filed a motion to quash the 10(k) hearing. A hearing was held on March 11, 1998, for the limited purpose of taking evidence on the motion to quash.

At the hearing, Business Agent de Vries confirmed the Teamsters' intent, expressed in Carpenters' March 2 letter to McGann, to disclaim any interest in the cubicle work at the Midcon jobsite. At the end of the hearing, the hearing officer granted the Carpenters' motion to quash, finding that the work had, in fact, been effectively disclaimed by the Teamsters both through the March 2 letter and through Richard de Vries' testimony.

Following the hearing, Joyce Brothers requested special permission to appeal the hearing officer's ruling. On July 28, 1999, the Board granted the request, stating as follows:

> The issue raised with respect to the motion to quash the notice is appropriately resolved on a full record after a complete Section 10(k) hearing. See *Longshoremen ILWU (General Ore)*, 124 NLRB 626, 628–629 (1959) ("The primary function of the hearing officer, who is acting under the delegation of authority from the Board, in a nonadversary proceeding is to insure that the record contains a full statement of pertinent facts as may be necessary for the determination of the dispute by the Board."). Accordingly, without deciding at this time whether there was a valid disclaimer, the Employer's request for special permission to appeal the hearing officer's ruling to quash the notice of hearing is granted, and the matter is remanded to the Regional Director for further appropriate action.

Pursuant to the Board's Order, a second hearing was held on September 8, 1998. Prior to that hearing, on September 2, 1998, Teamsters Local 705 counsel Carpenter wrote to the Board's Regional Director to reiterate the Teamsters' disclaimer, stating that "the work in question, as described at the [March 11] hearing, is properly assigned to members of the Carpenter's [sic] Union, rather than members of Teamsters Local 705 employed by Joyce Brothers." Teamsters Local 705 declined to participate in the September 8 hearing.

B. Work in Dispute

The work in dispute is the assembly and disassembly of furniture, including cubicles, owned by Midcon Corporation at the facility located at 701 East 22nd Street, Lombard, Illinois.

C. Contentions of the Parties

Teamsters Local 705 and Carpenters Local 558 contend that there is no work assignment dispute in this case because Teamsters Local 705 has effectively disclaimed any interest in the cubicle work. As to the desire expressed by Ira Gleason and certain other members of the bargaining unit to continue doing the work, Teamsters Local 705 notes that Gleason at the first hearing expressly stated that he had not intended to claim the work when he filed his charge. Rather, he filed the charge because he did not know who should be performing the work. Carpenters Local 558 acknowledges that Gleason attempted to claim the work "in his individual capacity," but contends that individuals may not create a jurisdictional dispute when their union has effectively disclaimed the relevant work.

The Employer contends that a work assignment dispute continues to exist between Gleason and other Joyce employees who have traditionally performed cubicle work, on the one hand, and the Carpenters Union on the other. The Employer also argues that the Teamsters' disclaimer is not clear and unequivocal, because the disclaimer is factually inaccurate in its statements about the history of Teamsters Local 705 and Carpenters Local 558 working at Midcon.

D. Applicability of the Statute

Section 10(k) of the Act directs the Board to hear and determine disputes out of which Section 8(b)(4)(D) charges have arisen. Before the Board may proceed to determine a dispute under Section 10(k), however, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated. Such reasonable cause requires (1) the existence of a genuine jurisdictional dispute; (2) activity proscribed by Section 8(b)(4)(D)(i) or (ii) of the Act; and (3) an objective to force the Employer to reassign the work. *Longshoremen ILA Local 1235 (Naporano Iron)*, 306 NLRB 698, 699–700 (1992).

A genuine jurisdictional dispute arises when there "is a dispute between two or more groups of employees over which is entitled to do certain work for an employer." Id. at 700. The Board has held, with Supreme Court approval,[1] that a jurisdictional dispute no longer exists when one of the competing unions or parties effectively renounces its claim to the work. *Plumbers Local 262 (Dyad Construction*), 252 NLRB 48, 49 (1980). To be effective, a disclaimer must be a clear, unequivocal, and unqualified disclaimer of all interest in the work in question. *Operating Engineers Local 150 (Interior Development)*, 308 NLRB 1005, 1006 (1992).

In the instant case, Teamsters Local 705 has consistently disclaimed any interest in the disputed cubicle work. No such work has been performed by employees represented by Teamsters Local 705 since January 14, 1998. Nothing that Teamsters Local 705 has said or done is in conflict with the Union's disclaimer.

[1] See *NLRB v. Plasterers Local 79 (Texas State Tile & Terrazzo Co.)*, 404 U.S. 116, 134–135 (1971).

The Employer argues that the Teamsters' March 2 disclaimer is invalid and must fail because it is internally inconsistent and equivocal and based on mistaken facts. In addition, the Employer accuses Business Agent de Vries of "equivocation" in his testimony regarding the March 2 disclaimer. It is not necessary, however, for us to scrutinize the language of the March 2 disclaimer letter or the testimony of de Vries to determine whether the alleged inconsistencies compromise its validity, as there is a later disclaimer which the Employer has ignored. The Teamsters' counsel in his September 2, 1998 letter to the Regional Director simply, clearly, and unequivocally stated that the work described at the March 11 hearing should be assigned to employees represented by the Carpenters and not to employees represented by the Teamsters. We find on the basis of this disclaimer, viewed in light of the earlier disclaimer and the entire record, that Teamsters Local 705 has effectively and unequivocally disclaimed the disputed work assignment.

We find no merit in the Employer's contention that the stated desire of the Charging Party and other bargaining unit employees to continue to do the cubicle work creates a continuing jurisdictional dispute. Gleason filed his charge in order to get an answer to his question about who had a right to the cubicle work, not to assert a claim to the work.[2] Consequently, there is no dispute.

Even assuming that Gleason in fact intended to claim the work for himself and other bargaining unit members, the Employer's contention must fail. Concededly, there may be cases where a group of employees continues to claim the work, even after their union has ostensibly disclaimed the work.[3] If there is also a rival claim by another group, a jurisdictional dispute may exist. However, in the instant case, there is no indication that Gleason or any of his fellow employees continued to seek the work after Teamsters Local 705's disclaimer. In any event, independent conduct by individual members of a union will not vitiate a disclaimer when "the totality of the circumstances indicates that the disclaimer was not equivocal." *Longshoremen ILA Local 1235 (Naporano Iron*), supra at 700; and *Teamsters Local 85 (U.C. Moving Services)*, 236 NLRB 157, 158 (1978) (throughout the hearing individual members of disclaiming union asserted claims to the disputed work). To find a union's disclaimer rendered ineffective solely on the basis of the independent statements of some individual members would undermine the union's position as the statutory bargaining representative and would counter the well-established principle of exclusive representation, particularly in the absence of convincing evidence that the union's disclaimer was equivocal. See *Teamsters Local 85 (U.C. Moving Services*), supra at 159.

In light of our conclusion that Teamsters Local 705's disclaimer was effective and unequivocal, the claims of Gleason and other bargaining unit members are of no effect. Accordingly, we find that competing claims to the disputed work within the meaning of the Act no longer exist and that there is no reasonable cause to believe that Section 8(b)(4)(D) has been violated. We shall therefore quash the amended notice of hearing issued here.

ORDER

The amended notice of hearing issued in this case is quashed.

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[2] Gleason testified:

> Q. Mr. Gleason, you testified that the reason you filed the charge against the Carpenters was because you weren't sure whose jurisdiction this work came under; is that correct?
>
> A. Correct
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> Q. So by filing this charge, you weren't making a claim that it was [Teamsters] work. You didn't know one way or the other; is that correct?
>
> A. Exactly.

Tr. of March 11, 1998, at 104–105.

> Q. Isn't it true . . . when you testified [on March 11] you stated that you filed the charges because you weren't sure of whose jurisdiction it was, Carpenters or Teamsters?
>
> A. Correct.
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> Q. That's an accurate statement?
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> A. It's accurate.
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> Q. And you also responded in questions at that time that you were not making a claim to the work. Do you recall that?
>
> A. Yes, I do.

Tr. of September 8, 1998, at 105–106.

[3] See *Pipeliners Local 798 (Moon Pipeline Contractors)*, 177 NLRB 872 (1969); and *Bricklayers Local 2 (Decora, Inc.)*, 152 NLRB 278 (1965).